* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ BAIL APPLICATION NO. 1940 of 2006

Reserved on : 15.5.2007
Pronounced on : 31-5-2007

KULBHUSHAN PARASHER ..... Petitioner
Through: Mr. Mukul Rohtagi, Senior Advocates

versus

STATE through CBI ..... Respondents
Through Ms. Mukta Gupta, Advocate

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Mr.Justice S. Ravindra Bhat :

1. The applicant is accused of having committed offences punishable under Sections 3 and 4 of the Official Secrets Act, read with Section 120-B, Indian Penal Code, 1860 (hereafter "IPC").

2. According to allegations, the Indian Navy found that sensitive and classified information was being leaked. To ascertain the source and extent of leakage of classified informations, the Indian Navy constituted a Board of Inquiry. On the

basis of findings of the court of inquiry and the board of inquiry, Sambajee Lal Surve of Indian Air Force Capt. Kashyap Kumar, Commander Vijender Rana and Commander V.K. Jha were dismissed from the services. Apparently, the names of some private persons including retired defence officers also figured during the inquires, against whom action was not possible under *inter alia* the Navy Act. The Central Government referred the matter to Central Bureau of Investigation (CBI) for initiating criminal proceedings against all the involved persons.

3. The CBI registered case NO. RC 2(A)/2006/ACU-IX/CBI/ New Delhi on 20.03.2006 under Section 120-B IPC & Sec. 3(1) (i) & 5 of the Official Secrets Act, 1923. According to allegations in the FIR, reliable information was received from the Ministry of Defence that the then Wing Commander Sambhajee L. Surve of India Air Force, the then Commander Vijender Rana, the then Commander Vinod Kumar Jha, the then Captain Kashyap Kumar, all of the Indian Navy, in

collusion with private persons, *inter alia,* the applicant Kulbhushan Parashar, Ravi Shankaran, Wing Commander (Retired) S.K. Kohli, Mukesh Bajaj, Ms. Rajrani Jaiswal and unknown person of a communication company called "Atlas" conspired to unathorizedly trade in classified documents/ informations relating to Ministry of Defence, Central Government, which, if disclosured was likely to affect the sovereignty of India. During investigation, CBI conducted searches, under Section 11(2) of the Official Secrets Act. Six persons, including the applicant were arrested in April, 2006; an accused, Ravi Shankaran, who allegedly conspired with them, could not be arrested, as he was out of the country. His passport was revoked and the Central Government, is making efforts to have him brought back.

4. It was alleged that investigations established that for the purpose of collecting and obtaining sensitive information relating to safety, secruity and sovereignty of the nation, accused petitioner Kulbhushan Parashar and Ravi Shankaran in conspiracy with each other allured the serving defence officers, namely, SL Surve and Vijender Rana by way of providing them with gifts and allurements in cash and kind. In furtherance of the conspiracy, the petitioner purchased and provided and provided pen drives to SL Surve and Vijender Rana, for the purpose of enabling them to copy sensitive information relating to national security from secured computer systems of Navy and computers of Air force. The

petitioner, acting in a manner prejudicial to the safety and interest of the State, caused the collection and receipt of sensitive information unauthorisedly by way of 3603 pages of information in a Pen – drive, which was recovered from accused SL Surve and 3264 pages in "Jet" Flash Pen-drive, which was recovered from accused Vijender Rana as well as by way of exchanging e-mails with the intension to promote his business interests.

5. It is submitted by Learned senior counsel, Mr. Mukul Rohtagi that the applicant was arrested on 5.04.2006 and was remanded to CBI custody; he was later sent to judicial custody on 19.04.2006. Since then, he has been in jail. The trial court refused him bail. Counsel submitted that the charge sheet in this case was submitted long back, on 3-7-2006.

6. Counsel submitted that the petitioner, a retired naval officer, who had started his business, has been falsely involved in the matter. It was submitted that no incriminating material has been recovered from the applicant; there is also no material circumstance, linking him with anything that can even remotely constitute offecences under Sections 3 and 5 of the Official Secrets Act.

7. Learned counsel submitted that the only material fact which the prosecution could point to was the so called recovery of pen drives on 13-4-2006; yet that factor could not be termed incriminating, because nothing incriminating was found in those pen drives. Further, and more importantly, the pen drives had been handed

over over seven months before their recovery, and the chances of their being tampered with, or worked upon were very real. Counsel relied upon D-12, the seizure memo, which reads as follows:

> *"Today in the presence of independent witnesses S/sh. Mukesh Kumar Roy, Administrative Officer & Sanjeev Kumar Arora, Higher Grade Assistance, both from Life Insurance Corporation, Vigilance Department, Jeevan Bharati Bldg., Tower-2. Cannaught Place, New Delhi. Cdr. Anupan Kaushal, as mentioned above, produced a Pen drive of silver grey colour, make "Transcend" with Sr. No. written on plastic part, visible after removing the cap, as "72989-0314-OC-6C" in unsealed condition. He informed that the same was handed over by Ex. Cdr.. Vijender Rana on 07.08.2005 to him. Thereafter, forensic analysis was conducted by Cdr. S. Dutta by directly (without write block) accessing it and taking its image on more than one occasion. Thereafter, the Pen Drive has remained in the possession of Cdr. Anupam Kaushal since then. This pen drive was again accessed yesterday by Cdr. Dutta in his presence in order to identify that whether the same is the one which he had received from Vijender Rana or not as he was having two other pen drive containing two clones of the Pen Drive recovered by Air Force authorities from Sambajee Lal Surve. The pen drive has been sealed in the presence of the above mentioned witnesses under the signatures of all present."*

8. It was submitted that on the basis of such flimsy material, no case could be made out against the petitioner, much less a case of grave suspicion. Therefore, he was entitled to bail.

9. Ms. Mukta Gupta, learned counsel for the State, opposed the application. She submitted that the petitioner, in conspiracy with co-accused acted in a manner prejudicial to the safety and security of the nation by way of obtaining and exchanging classified information, which is critical for the security of the nation, unauthorisedly, by way of exchanging e-mails and using

internet voice and text messaging facility with the intention to promote his ostensible business interests. According to investigation S.L. Surve, in conspiracy with the petitioner, compromised sensitive information pertaining to national security by copying classified official files into non-official pen drives, given by the petitioner. The pen drives were passed on to the petitioner, for illegal gratification, received by co-accused in the form of mobile phones, cash cards, air tickets, taxi services, cash as well as accepting his

hospitality on various occasions. A mobile phone received by S. L. Surve from the petitioner was used by Ms. Raj Rani Jaiswal, with whom the said S.L. Surve had extra marital relations. He was in unauthorized possession of sensitive information of classified nature running into 3603 pages relating to national security whose disclosure has serious implications.

10. Counsel submitted that the petitoiner also conspired with Vijender Rana and Ravi Shankaran and compromised sensitive and critical information pertaining to national security by unauthorized use of non-official pen drive on the DNO LAN by way off passing on the same to unauthorized persons and with it may be passed on to some persons outside India. He (Rana) had unauthorized possession of sensitive information running into 3264 pages on the Jet Flash pen drive. He unauthorisedly took an official computer from the DNO to his residence on the instance and consent of V.K. Jha the then Joint Director Naval Operations (Systems) and (Administration & Coordination) which was used to exchange sensitive information with unauthorised persons viz the petitoner and Ravi Shankaran through e-mails. Vijender Rana received substantial illegal gratification from the petitioner, in various forms – cash, payment of telephone bills, the installation of land line telephone at his residence, hiring of taxis and air tickets etc. in lieu of providing critical information related to national security by misusing his official position. Likewise, co-accused V.K. Jha had unauthorizedly

given an official computer to Vijender Rana's residence at 7/73, Arjun Vihar, New Delhi which was used by the latter to transmit sensitive information having serious implications on national security related to 'Sir Creek' and various Patrol Boats specifications, to the petitioner and co-accused Ravi Shankaran. As Joint Director Naval Operations (Systems) and (Administration & Coordination), V.K. Jha had not the accounting of the official portable media (Pen drive) as per standing orders and he also allowed illegal use of Pen drive in DNO which facilitated the leakage of sensitive information to the petitioner and Ravi Shankaran. The petitioner was an active party, and conspirator to all these illegal acts.

11. It was submitted that according to investigation the petitioner maintained close association with various officers of Ministry of Defence, both from the services and staff, for obtaining sensitive information and favours in the commercial purchases of the Ministry of Defence. The 'Tiff' and 'PDF' documents running into 369 pages were recovered from the Jet Flash Pen drive. They

prima facie are related to the petitioner and point to the involvement of more defence officers and other private persons (who are not named in the present FIR) in the collection and passing out of sensitive defence information.

12. It was submitted that the allegation that the pen drives were tampered, as they had been in the custody of Cdr. Kaushal who had worked on them, is unfounded, since a "clone file" containing the contents was created; that was worked upon. The pen drive itself was not tampered or worked upon. It was submitted that contents of the pen drives were sought to be erased; yet some vital clues could be recovered, which pointed sufficiently to illegal gratification received, and the nature of information passed on. In view of these circumstances, the applicant was not entitled to bail.

13. The above discussion would show that leakages were found in the offices of the Indian Navy; a court and Board of inquiry was held. The matter was later entrusted to the CBI, which seized materials, and documents. It proceeded to arrest several officers, and retired officials, including the applicant. The materials and circumstances put against the petitioner are that he had furnished unauthorized pen drives, which were bought by him; those were used by other co-accused, serving officials, to copy and transmit classified and sensitive information relating to national security. It was also alleged that the serving officers were in constant touch with the petitoner, and other co-accused, through e-mail and on line chatting,

when they passed on sensitive information, which amounted to offences under the Official Secrets Act. The applicant's defence is that nothing incriminating was found in his possession; that the pen drives do not contain any comprehensible information and that the entire prosecution version is premised on conjectures. It was also submitted that the possibility of evidence tampering could not be ruled out.

14. The charge sheet in this case has defined the role of the petitioner, as one of the conspirators who connived with the serving officers. The latter passed on information to the applicant, through pen drives bought by him. The pen drives were used by the serving officers on official computers, which was irregular; classified information was copied and passed on. Apart from this link, the other allegation is that the petitioner was involved in passing on illegal gratification and favours to the co-accused, in exchange for the information. Additionally, it is alleged that the applicant also received such classified information through e-mail and internet chatting, with other co-accused. Although the applicant has sought to raise a doubt about the genuineness of a pen drive, stating that the possibility of its being tampered cannot be ruled out, yet the prosecution states that a clone file was created, which was worked upon, and not the contents of the pen drive.

15. In considering applications for bail, apart from the period of custody or detention, which is a relevant circumstance, other factors, such as the nature of

accusation and the severity of punishment in case of conviction and the nature of supporting evidence; reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; *Prima facie s*atisfaction of the court in support of the charge, have to be considered by the court. In the present case, there are several circumstanes which *prima facie* appear to connect the applicant with the incriminating features, such as evidence of his being instrumental in giving or offering illegal gratification; his being receipient of classified infromation through e-mail and chatting, and also his supplying the unauthorized pen drives used to copy sensitive and forbidden information, which were passed on to him.

16. On an overall conspectus of the facts, and having regard to the severity of the offences and allegations, I am of the considered view that it would not be appropriate to grant bail to the applicant. In these circumstances, the application has to fail; it is accordingly dismissed.

DATED: 31 May, 2007 S. RAVINDRA BHAT, J